

United States
Circuit Court of Appeals

For the Ninth Circuit.

S. T. HILLS, as Trustee of the Estate of MAX JOSEPH,
Doing Business as WORKINGMEN'S CLOTH-
ING STORE, Bankrupt,

Petitioner,

VS.

MAX JOSEPH, Doing Business as WORKINGMEN'S
CLOTHING STORE, Bankrupt,

Respondent.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of Law,
of an Order of the United States District
Court for the Western District of
Washington, Northern Division.

Filed

JUL 16 1915

F. D. Monckton,
Clerk

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*United States Circuit Court of Appeals for the
Ninth Circuit.*

No. 5431.

In the Matter of MAX JOSEPH, Doing Business
as Workingmen's Clothing Store,
Bankrupt.

Petition for Review.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

Comes now S. T. Hills of Seattle, Washington, and respectfully shows unto the Court:

First. That on the 22d day of March, 1915, one Max Joseph of Everett, Snohomish County, Washington, was adjudicated a bankrupt in the United States District Court for the Western District of Washington, Northern Division, and that thereupon the matter was referred to Robert McMurchie, Referee at Everett for further proceeding. That thereafter your petitioner was, after notice duly given, elected Trustee of the above-named bankrupt and is now the duly qualified and acting Trustee of said estate.

Second. That in his said petition for adjudication, the said bankrupt claimed as exempt, certain dry goods, clothing, etc., out of his stock of merchandise in lieu of the animals mentioned in subsection 40, section 563 of Remington & Ballinger Code of the State of Washington. That the provision of said code is as follows:

“To every householder two (2) cows with their calves, five (5) swine, two (2) stands of bees, thirty-six (36) domestic fowls and provisions and fuel for the comfortable maintenance of such householder and family for six (6) months; also feed for such animals for six months:

“Provided that in case such householder shall not possess or shall not desire to retain the animals above named he may select from his property and retain other property not to exceed Two Hundred Fifty and no/100 (\$250.00) Dollars, coin, in value. The selection in the proviso mentioned shall be made in the manner and by the person and at the time mentioned in subdivision three and said selection shall have the same effect as selections made under subdivision three of this section.”

Third. That on April 9th, 1915, your petitioner herein, as Trustee, filed with the Referee, an order refusing to set aside the lieu exemptions. The entire stock of merchandise of the bankrupt was sold by your petitioner, there being a stipulation between your petitioner and the said bankrupt that in case said lieu exemptions were allowed by the Court, the said sum of Two Hundred Fifty and no/100 (\$250.00) Dollars should be paid in cash instead of in merchandise. That a copy of your petitioner's order refusing to set aside the lieu exemptions is hereto attached and marked exhibit “A” and made a part hereof.

Fourth. That thereafter and on April 10th, 1915,

said bankrupt filed with said Referee his exceptions to the order of the Trustee refusing to set aside said lieu exemptions, a copy of which exceptions is hereto attached to this petition, marked exhibit "B" and made a part hereof.

Fifth. That thereafter and on April 28th, 1915, said Referee made and signed an order refusing the order of the Trustee and directing him, the said Trustee, to pay said bankrupt the sum of Two Hundred Fifty and no/100 (\$250.00) Dollars, out of the proceeds derived from the sale of the stock of merchandise of said bankrupt. That a copy of said order is hereto attached marked exhibit "C" and by reference made a part hereof.

Sixth. That thereafter and on May 3d, 1915, your petitioner filed his petition for review in the United States District Court for the Western District of Washington, Northern Division and that thereupon said Referee duly certified said proceeding for review to the judges of the said court. That a copy of said petition for review is hereto attached marked exhibit "D" and by reference made a part hereof. That thereafter and on May 17th, 1915, pursuant to notice of hearing duly given, a hearing was had thereon and on May 20th, 1915, said court acting through the Honorable Jeremiah Neterer, Judge thereof, filed its opinion affirming said order of the Referee, a copy of which opinion is hereto attached marked exhibit "E" and by reference made a part hereof.

Seventh. That no proof was taken in connection with the determination by said Referee or by the

Honorable Jeremiah Neterer, and the entire proceeding upon which said orders were grounded appear in the exhibits hereto attached.

Eighth. Your petitioner charges the fact to be that the said District Court erred in affirming the order of the said referee reversing the order of the Trustee refusing to allow said bankrupt the lieu exemptions. Your petitioner further charges that under the laws of the State of Washington by virtue of which said exemptions were claimed by said bankrupt and under the decision of the Supreme Court of the said State, said bankrupt is not entitled to said exemptions.

Ninth. Your petitioner therefore prays that the order of the District Court be set aside and held for naught and that by the order of this Court it be decreed that said lieu exemptions be not allowed the bankrupt and that your petitioner be given such other relief as shall be proper.

That an order be entered directing the manner and time of service of this petition.

CASSIUS E. GATES and

L. A. MERRICK,

Attorneys for Petitioner.

State of Washington,
County of King,—ss.

S. T. Hills, the petitioner mentioned and described in the foregoing petition does hereby make solemn oath that the statements contained therein are true according to the best of his knowledge, information and belief.

S. T. HILLS.

Subscribed and sworn to before me this 4 day of June, 1915.

[Seal] CASSIUS E. GATES,
Notary Public in and for the State of Washington,
Residing at Seattle.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

No. —.

In the Matter of Petition of S. T. HILLS for Review.

In the Matter of MAX JOSEPH, Doing Business as
WORKINGMEN'S CLOTHING STORE,
Bankrupt.

[Notice of Filing of Petition for Review.]

To S. A. Bostwick, Attorney for Max Joseph, Bankrupt.

You are hereby notified that on the fourteenth day of June, 1915, at the hour of 12 o'clock M., we will file in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, a petition for Review in the above-entitled cause, a copy of which petition is hereto attached as a part of this notice and we will then ask to have the case docketed and the necessary order made therein to have such case set down for hearing.

CASSIUS E. GATES and
L. A. MERRICK,
Attorneys for Petitioner.

I hereby accept service of the above Notice this 7th day of June, 1915, and acknowledge receipt of a copy of said Petition for Review.

S. A. BOSTWICK,
Attorney for Bankrupt.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of Petition of S. T. Hills for Review. In the Matter of Max Joseph, Doing Business as Workingmen's Clothing Store, Bankrupt. Filed Jun. 14, 1915. F. D. Monckton, Clerk.

[Endorsed]: No. 2613. United States Circuit Court of Appeals for the Ninth Circuit. S. T. Hills, as Trustee of the Estate of Max Joseph, Doing Business as Workingmen's Clothing Store, Bankrupt, Petitioner, vs. Max Joseph, Doing Business as Workingmen's Clothing Store, Bankrupt, Respondent. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, of an Order of the United States District Court for the Western District of Washington, Northern Division.

Filed June 14, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

S. T. HILLS, Trustee in Bankruptcy,

Petitioner,

vs.

MAX JOSEPH, Doing Business as WORKINGMEN'S
CLOTHING STORE,

Respondent.

In the Matter of MAX JOSEPH, Doing Business as
WORKINGMEN'S CLOTHING STORE, Bank-
rupt.

CERTIFIED TRANSCRIPT OF RECORD
IN SUPPORT OF PETITION
FOR REVISION

Under Section 24b of the Bankruptcy Act of Congress,
Approved July 1, 1898, to Revise, in Matter of Law,
Certain Orders and the Judgment of United
States District Court for the Western
District of Washington, North-
ern Division.

*In the District Court of the United States for the
Western District of Washington, Northern,
Division.*

No. 5431.

In the Matter of MAX JOSEPH, Doing Business
as WORKINGMEN'S CLOTHING STORE,
Bankrupt.

Names and Addresses of Counsel.

LOUIS A. MERRICK, Esquire, Attorney for
Trustee in Bankruptcy, Everett, Washington.

CASSIUS E. GATES, Esquire, Attorney for Trustee
in Bankruptcy, 1209 L. C. Smith Building,
Seattle, Washington.

S. A. BOSTWICK, Esquire, Attorney for Bankrupt,
Everett, Washington. [1*]

Exhibit "A."

*United States of America, District Court for the
Western District of Washington, Northern
Division.*

IN BANKRUPTCY.

In the Matter of MAX JOSEPH, Doing Business
as WORKINGMEN'S CLOTHING STORE,
Bankrupt.

TRUSTEE'S ORDER AS TO EXEMPTIONS.

Comes now S. T. Hills, the duly elected, qualified
and acting Trustee in the above-entitled matter, and
makes his order respecting exemptions claimed by

*Page-number appearing at foot of page of Original certified Transcript of Record.

the bankrupt herein, both in original schedules, and in the amended schedules, permitted by the Referee to be filed herein.

And this order is made in accordance with an oral order made at a meeting of creditors, by the Trustee, holden at the office of the Referee in said matter, on the 5th day of April, 1915, at which meeting the bankrupt and his attorney were also present.

The trustee sets aside to the bankrupt as exempt, as claimed in the amended schedules, all wearing apparel of the bankrupt and family of a scheduled value of Seventy-five (\$75.00) Dollars; family pictures and keep-sakes, Twenty-five (\$25.00) Dollars; all household furniture of the bankrupt, of a scheduled value of (\$285.00) Two Hundred Eighty-five Dollars; all books, prints and pictures of a scheduled value of Ten (\$10.00) Dollars.

The trustee refuses to set aside to the bankrupt, as exempt, any of the articles claimed in the amended schedules, as follows:

Clothing and dry goods now in the hands of the Receiver at 2014 Hewitt Avenue, to be selected by the petitioner to the value of Two Hundred Fifty (\$250.00) [2] Dollars in lieu of property mentioned in sub-section 4 of Section 563 of Rem. & Bal. Annotated Code and Statute:

32 lbs. leather @ 40¢.....	\$ 12.80
1 doz. Shoe Polish @ 40¢.....	.65
15 “ Hose @ 65¢.....	9.75
27 “ U. S. Hose @ 65¢.....	17.55
4½ “ Silk hose @ 1.75.....	7.83
16 “ U. S. Hose @ 65¢.....	10.40

entitled to claim the same as exempt in lieu of two (2) cows with their calves, five (5) swine, two (2) stands of bees, thirty-six (36) domestic fowls, not possessed by the bankrupt, and upon the ground and for the reason that the articles claimed in the Amended Schedules, claim of which is rejected, as exempt, are not articles of like character with those allowed as exempt. [3]

Dated April 9th, 1915.

(Signed) S. T. HILLS,
Trustee in Bankruptcy.
MAX JOSEPH,
Bankrupt. [4]

Exhibit "B."

In the United States District Court for the Western
District of Washington, Northern Division.

Before ROBERT McMURCHIE, Referee.

No. 5431.

In the Matter of MAX JOSEPH, Doing Business as
WORKINGMEN'S CLOTHING STORE,
To be adjudged Bankrupt.

EXCEPTIONS TO TRUSTEE'S REPORT.

Comes now Max Joseph, the bankrupt herein, by and through his attorney, S. A. Bostwick, and excepts to the Trustee's report herein setting off said bankrupt's exceptions filed herein on the 9th day of April, 1915, in that said report, of said Trustee, fails to allow as exempt and refuses to set off as exempt, to this bankrupt, the following articles set forth and claimed as exempt in schedule B (5) as amended, under subsection four of Section 563 of

Rem. & Bal. Annotated Code of the Statute of Washington:

32 lbs. leather	@ 40¢	\$ 12.80
1 doz. Shoe polish	@ 65¢	.65
15 doz. Hose	@ 65¢	9.75
27 doz. U. S. Hose	@ 65¢ doz.	17.55
4½ doz. Silk hose	@ 1.75 "	7.83
16 doz. U. S. Hose	@ 65¢ "	10.40
10½ " Hose	@ 1.25 "	13.13
16 " Hose	@ 80¢ "	12.80
6 " Hose	@ 1.75 "	10.50
6½ " Shirts	@ 3.75 "	24.37
2 " Shirts	@ 3.75 "	7.50
15 " Underwear, drawers & Shirts	@ 3.75 "	55.28
2 " Union Suits	@ 7.50 "	15.00
4 Matting suit cases	@ 1.50 "	6.00
3 " " "	@ .75	2.25
1 " " "	@ 1.25	1.25
5 " " "	@ 1.00	5.00
3 " " "	@ 2.00	6.00
1 Leather Suit case	@ 4.00	4.00
1 " " "	@ 3.50	3.50
1 " " "	@ 2.00	2.00
1 " " "	@ 4.00	4.00
1 " " "	@ 1.00	1.00
1 " " "	@ 1.00	1.00
1 " " "	@ 1.00	1.00
1 " " "	@ 1.00	1.00
1 " " "	@ 2.00	2.00
1 " " "	@ 1.00	1.00

1	“	“	“	1.00
1	“	“	“	@ 1.25	1.25
1	“	“	“	@ 1.00	1.00
1	“	“	“	@ 1.00	1.00
4	Matting Suit Cases			@ .75	3.00
4	Imitation Leather				
	Suit Cases	@	.75	3.00
1	Leather suit case	@		1.25
					<hr/>
					\$250.03

The bankrupt prays that a hearing may be had upon such exceptions and that the same may be argued, as provided in General Order XVII.

Dated this 9th day of April, 1915.

(Signed) S. A. BOSTWICK,
Attorney for Excepting Bankrupt. [6]

Exhibit "C."

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 5431—IN BANKRUPTCY.

In the Matter of MAX JOSEPH,

Bankrupt.

ON EXCEPTIONS TO THE ORDER OF THE
TRUSTEE DENYING BANKRUPT'S CLAIM
OF CERTAIN PROPERTY AS EXEMPT.

S. A. BOSTWICK, Esq., of Everett, Attorney
for Bankrupt.

CASSIUS E. GATES, Esq., of Seattle, and
LOUIS A. MERRICK, Esq., of Everett,
Attorneys for Trustee.

The bankrupt has made his claim for exemptions,

in property other than money, of an alleged value not exceeding Two Hundred Dollars, in lieu of the animals mentioned in subdivision 4 of section 563 of Rem. & Bal. Ann. Codes and Statutes of Washington. The articles so claimed as exempt are enumerated in the amended schedules filed by the bankrupt and also in the order of the Trustee refusing to set them aside as exempt. The ground of his refusal is stated by the Trustee as follows:

“The trustee doth make this order refusing to set aside the above described articles as exempt, on the ground and for the reason that the bankrupt is not entitled to claim the same as exempt in lieu of 2 cows with their calves, 5 swine, 2 stands of bees, 36 domestic fowl not possessed by the bankrupt, and upon the ground and for the reason that the articles claimed in the amended schedules, claim of which is rejected, as exempt, are not articles of like character with those allowed as exempt.”

It is admitted that the bankrupt is entitled to exemptions; that he did not possess any of the animals, etc., described in subdivision 4 *supra*, and that the articles claimed under this subdivision are not of like character.

The contention of learned counsel for the Trustee is that the exemption statute as construed by the Supreme Court of this State is controlling in the Bankruptcy Court, and [7] that the construction of this statute by the Supreme Court of the State

in Creditor's Collection Association vs. Frank E. Bisbee et al., 80 Wash. 358, precludes the bankrupt from claiming as exempt any property except such as is of like character to that mentioned in said subdivision. This identical question has been squarely decided, adversely to the contention of the Trustee, by the learned Judge of this District, in re J. H. Crook, No. 5351, opinion filed January 14th, 1915. In that matter Judge Neterer discussed counsels contention at considerable length, submitting the argument in the Bisbee case to the closest scrutiny, and deciding that the bankrupt could claim other property in lieu of that mentioned in subdivision 4. This decision is controlling upon the referee and we need go no farther in an investigation of the point presented. We accordingly hold that the bankrupt is entitled, under his claim of exemption, to the property in question. At the time of the sale a stipulation was entered into between the attorney for the bankrupt and the attorney for the Trustee, whereby the Trustee, without prejudice to the rights of the bankrupt might sell said property along with the other property of the bankrupt, and that a sum of Two Hundred and Fifty Dollars be held by the Trustee, in lieu thereof. This being done, the order of the Referee is that the order of the Trustee denying bankrupt's claim of exemption be overruled, and that the bankrupt is entitled to be paid the sum of Two Hundred and Fifty Dollars in the hands of the Trustee, and the Trustee is ordered to pay such sum

to the bankrupt in lieu of the exempt property allowed to be sold under the stipulation.

Dated April 28th, 1915.

(Sgd.) ROBERT McMURCHIE,
Referee in Bankruptcy. [8]

Exhibit "D."

*United States of America, District Court for the
Western District of Washington, Northern Di-
vision.*

IN BANKRUPTCY.

In the Matter of MAX JOSEPH, Doing Business as
WORKINGMEN'S CLOTHING STORE,
Bankrupt.

PETITION TO REVIEW REFEREE'S ORDER.

Now, comes S. T. Hills and represents that petitioner is the duly elected, qualified and acting Trustee in the above-entitled matter, and as such was a party to the following certain proceeding in said bankruptcy pending before Honorable Robert McMurchie, as the Referee in Bankruptcy, in charge thereof, to wit: Exceptions filed by the bankrupt to the order of the petitioner, and Trustee, denying the claim of the bankrupt, for exemptions, in and to certain specific articles of stock in trade, in lieu of certain other specific articles set forth in subdivision 4, section 563, Rem. & Bal. Codes, which said certain specific articles were not possessed by the bankrupt, to wit: Two cows with their calves, five (5) swine, two (2) stands of bees, thirty-six

(36) domestic fowls, and provisions and fuel for the comfortable maintenance of such household, and family, for six months, also feed for the animals for six months.

Which said exceptions to the Order of the Petitioner, and Trustee, having been argued to the said Referee, the said exceptions were sustained and an order made by the Referee in said matter, on the 28th day of April, 1915, reversing and in all things setting aside the order of the trustee disallowing said claimed exemptions to which order of the Referee, petitioner duly excepted. [9]

Said order of the Referee is erroneous in that under and pursuant to the laws of the State of Washington, respecting exemptions, no exception is allowed to the bankrupt, under said subdivision of said section in lieu of said specific articles not possessed by him.

WHEREFORE petitioner prays that said order be reviewed, and reversed, and that the order of the Trustee, denying said claimed exemptions be affirmed and that he be restored to all things he has lost, by reason of such error of said Referee.

Dated May 3d, 1915.

(Signed) S. T. HILLS,
Trustee in Bankruptcy.
MAX JOSEPH,
Bankrupt.

By (Signed) LOUIS A. MERRICK,
His Attorney of Record. [10]

Exhibit "E."

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 5431.

Filed May 20, 1915.

In the Matter of MAX JOSEPH Doing Business
Under the Firm Name and Style of the
WORKINGMEN'S CLOTHING STORE,
Bankrupt.

LOUIS A. MERRICK, for Trustee.

S. A. BOSTWICK, for Bankrupt.

NETERER, District Judge:

On March 22d, 1915, Max Joseph was adjudicated a bankrupt, and the matter on the same day referred to Robert McMurchie, Referee at Everett, for further proceedings. March 31st, 1915, Esther Joseph, Bankrupt's daughter, filed with the Referee, her claim for \$150.00 alleged to be due her from bankrupt for services and labor as clerk in his store, during the months of November and December, 1914, and January, 1915, at a monthly wage of \$50.00 a month. Hearing was had, and testimony of bankrupt and his daughter adduced in support of the claim, and the Referee found that from claimant's own evidence she has been paid in full for all services rendered bankrupt, and wholly disallowed her claim. The matter is before the Court now on peti-

tion for review of the Referee's order. The order of the Referee disallowing her claim is affirmed.

The bankrupt claimed as exempt dry goods, clothing, etc., out of his stock of merchandise, to the value of \$250.00 in lieu of the animals mentioned in subsection 4 of section 563 Remington & Ballinger's Code of Washington. The Trustee refused to set those goods aside as exempt, and on a hearing before the Referee, the order of the Trustee was reversed, and the sum of \$250.00, proceeds of the sale of said goods pursuant to stipulation of the parties pending the hearing [11] before the Referee, ordered paid to bankrupt. The Trustee seeks a review of the Referee's order, and asks a reversal under the decision of the Supreme Court of Washington, in *Creditor's Collection Association v. Bisbee*, 38 Wash. Dec. No. 6. This Court *In re J. H. Crook, Bankrupt*, 219 Fed. 979, held that the Supreme Court in the *Bisbee* case merely decided that *money* could not be held as exempt as "other property" under subdivision 4 of Section 563 of the Washington Statute, and upheld the right of the bankrupt to claim as exempt, personal property other than money, under the subdivision of the section named. That case effectually disposes of the issue here.

The order of the Referee is affirmed.

JEREMIAH NETERER,

Judge. [12]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 5431.

In the Matter of MAX JOSEPH, Doing Business as
WORKINGMEN'S CLOTHING STORE,
Bankrupt.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing and attached, to be a full, true and correct copy of Trustee's Order as to Exemptions, Exceptions to Trustee's Report, Referee's Decision on Exceptions to the Order of the Trustee Denying Bankrupt's Claim of Certain Property as Exempt, Petition to Review Referee's Order, Decision of District Judge Affirming the Referee's Order, designated herein respectively as Exhibits "A," "B," "C," "D" and "E," as the originals thereof appear on file in said court at the City of Seattle, Washington, in said District.

Attest my official signature and the seal of the said District Court, at the City of Seattle, Washington, the 22d day of June, 1915.

[Seal]

FRANK L. CROSBY,
Clerk U. S. District Court. [13]

[Endorsed]: No. 2613. United States Circuit Court of Appeals for the Ninth Circuit. S. T. Hills, Trustee in Bankruptcy, Petitioner, vs. Max Joseph, Doing Business as Workingmen's Clothing Store, Respondent. In the Matter of Max Joseph, Doing Business as Workingmen's Clothing Store, Bankrupt. Certified Transcript of Record in Support of Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, Certain Orders and the Judgment of United States District Court for the Western District of Washington, Northern Division. Filed June 28, 1915.

F. D. MONCKTON,
Clerk.

